

22-04-405-4342

FEDERAL ELECTION COMMISSION
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Washington, D.C. 20463

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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR 4382

DATE COMPLAINT FILED: June 12, 1996
DATE OF NOTIFICATION
TO RESPONDENTS: June 12, 1996
DATE ACTIVATED: August 5, 1996

MUR 4401

DATE COMPLAINT FILED: June 26, 1996
DATE OF NOTIFICATION
TO RESPONDENTS: July 1, 1996
DATE ACTIVATED: August 1, 1996

STAFF MEMBERS: Peter Blumberg
Craig Reffner

COMPLAINANTS:

Democratic National Committee (4382)
Janet Strawder (4401)

RESPONDENTS:

Dole for President, Inc.
and Robert Lighthizer, as treasurer,
Dole/Kemp '96, Inc.
and Robert Lighthizer, as treasurer,
Dole/Kemp '96 Compliance, Inc.
and Robert Lighthizer, as treasurer,
Republican National Committee,
and Alec Poitevint, as treasurer,
Arizona Republican Party,
and Dean Cooley, as treasurer,
Nebraska Republican Federal Campaign Committee,
and Bob Bennie, as treasurer,
San Diego County Republican Central Committee,
and John Vogel, as treasurer,
Heritage Foundation
Citizens Against Government Waste

**RELEVANT STATUTES/
REGULATIONS:**

2 U.S.C. § 434(a)(1)
 2 U.S.C. § 434(b)(2)(A)-(E)
 2 U.S.C. § 441a(a)(2)
 2 U.S.C. § 441a(b)
 2 U.S.C. § 441a(c)
 2 U.S.C. § 441a(d)
 2 U.S.C. § 441a(f)
 2 U.S.C. § 441b(a)-(b)
 26 U.S.C. § 9033(b)(1)
 26 U.S.C. § 9035(a)
 11 C.F.R. § 100.7(a)
 11 C.F.R. § 110.8(e)(1)-(2)
 11 C.F.R. § 9002.11(a)
 11 C.F.R. § 9003.3
 11 C.F.R. § 9004.4
 11 C.F.R. § 9032.9(a)
 11 C.F.R. § 9034.1(a)
 11 C.F.R. § 9034.4(a)
 11 C.F.R. § 9034.4(b)(2)
 11 C.F.R. § 9034.4(e)
 11 C.F.R. § 9034.7(a)-(b)

INTERNAL REPORTS CHECKED: Disclosure Reports.

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTERS

These matters arose from two complaints filed with the Federal Election Commission ("Commission"). Each complaint similarly alleges that Dole for President, Inc. ("Primary Committee"), *inter alia*, exceeded the expenditure limitations set forth at 2 U.S.C.

§ 441a(b)(1)(A), in connection with Senator Robert J. Dole's campaign for nomination as the 1996

Presidential candidate for the Republican Party. See 26 U.S.C. § 9035(a). The responses to the complaint have been received. Attachments 1-7.

II. FACTUAL AND LEGAL ANALYSIS

A. Introduction

Publicly-financed campaigns for candidates seeking the presidential nomination of their parties must abide by state and overall expenditure limitations. 2 U.S.C. § 441a(b)(1)(A); 26 U.S.C. § 9035(a). The overall expenditure limitation for the 1996 presidential primary campaigns was \$37,092,000. The most recent disclosure report filed by the Primary Committee, the post-General Election report on December 7, 1996, states that the Committee spent \$37,037,385.27, or \$54,614.73 less than the overall expenditure limit.¹ The complainants allege that the Primary Committee exceeded the overall expenditure limitation. However, the complaints at issue in this matter do not allege that the Primary Committee directly spent amounts in excess of the expenditure limitation. Rather, the complainants allege that the Primary Committee exceeded the overall expenditure limitation by having various other entities (both political party committees and non-profit groups) make expenditures in connection with Senator Dole's bid for the Republican party nomination. This report examines whether these various organizations made expenditures and, if so, whether the expenditures should be treated as expenses of the Primary Committee, subject to the Primary Committee's \$37,092,000 overall expenditure limitation.

¹ The report reflects expenditures of \$31,464,987.84 and exempt fundraising expenditure of \$6,182,000.00. However, once debts owed to the Committee of \$728,585.17 are added to the limit, less \$118,982.60 owed by the Committee, then the Committee is within the expenditure limit, according to reported figures.

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1. Complaints and Responses

The first complaint, MUR 4382, was filed by the Democratic National Committee ("DNC" or "the complainant") on June 12, 1996. According to the DNC, the Primary Committee knowingly and willfully sought to evade the expenditure limitation by having other party committees and certain non-profit organizations make expenditures on behalf of the Primary Committee.

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D. Events

1. The law

A political party may make reimbursements for the expenses of a candidate who is engaging in party-building activities, without the payment being considered a contribution to the candidate, and without the unreimbursed expense being considered an expenditure counting against the expenditure limit of 2 U.S.C. § 441a(b)(1)(A), as long as: (1) the event is a bona fide party event or appearance; (2) no aspect of the solicitation for the event, the setting of the event, and the remarks or activities of the candidate in connection with the event were for the purpose of influencing the candidate's nomination or election. 11 C.F.R. § 110.8(e)(1). An event or appearance meeting these requirements that is held prior to January 1 of an election year when the individual is a candidate is presumptively party-related. 11 C.F.R. § 110.8(e)(2)(i). An event or appearance taking place on or after January 1 of an election year when the individual is a candidate is presumptively for the purpose of influencing the candidate's election, and any such expenditures are subject to expenditure limitation and constitute contributions to the candidate. 11 C.F.R. § 110.8(e)(2)(ii). These presumptions may be rebutted by a showing that the appearance was, or was not, party-related. 11 C.F.R. § 110.8(e)(2)(iii).

2. The complaint

The complaint alleges that certain costs related to Dole campaign events, and attributable to the Primary Committee expenditure limit, were paid by various state party committees

One example provided by the complainant is the Primary Committee's participation in a campaign event held in Omaha, Nebraska. According to the complaint, the event was paid for by

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the Nebraska Republicans, even though the scheduled event was a rally for Senator Dole. An invitation solicited individuals "to attend a special Dole for President rally." The Primary Committee's address was printed at the top of the invitation, and the invitation's disclaimer states that the Primary Committee had paid for it. Additionally, the Nebraska Republicans placed an advertisement in the local newspaper inviting people to attend the Dole rally.⁸ The advertisement's disclaimer stated that it was paid for by the Nebraska Republicans.

3. The response

With regard to the specific allegation concerning the Nebraska event, the Dole Committee and the Nebraska Republicans responded to the complaint by claiming that no

⁸ Nebraska Republicans disclosure reports also report disbursements to radio stations for "Dole event" advertisements. The expenditures for radio were not raised in the complaint.

⁹ Should the Commission find reason to believe that a violation has occurred, this Office will investigate what the "costs of advancing" an event may include.

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contribution occurred because the Dole Committee reimbursed the Nebraska Republicans for their expenses. The Nebraska Republicans' response explains that it was "contacted" by the Dole campaign to assist in organizing a Dole rally. Attachment 5 at 1. The Nebraska Republicans state that "because of various timing issues" it paid for various expenses "with the understanding" that the Primary Committee would reimburse it. *Id.* The Nebraska Republicans obtained space, stages, banners and other items required for an event, and were subsequently reimbursed by the Primary Committee for these expenses. The Nebraska Republicans do not address the advertisements that it obtained to advertise the rally. However, the Primary Committee stated that the print advertisement does not constitute "express advocacy" and that the Nebraska Republicans are entitled to "alert Party members to the fact that the presumptive Republican nominee was about to visit Nebraska." Attachment 1 at 16. The Primary Committee then noted that this advertisement was not chargeable to its expenditure limit since the Nebraska Republicans were entitled to make the expenditure. *Id.*

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4. Analysis

The Nebraska Republican Party made expenditures on behalf of the Primary Committee totaling \$15,784.97 by advancing the costs of a Dole rally held in Omaha Nebraska. These costs included preparations for a stage, bunting and banners, and other campaign materials, including some advertisements publicizing the event. These goods and services were acknowledged to have been made for the Dole campaign, and in fact, according to the Nebraska Republicans, were made after the Dole campaign "contacted" the Nebraska Republicans and presumably directed it to make the expenditures. According to Nebraska Republicans, it was reimbursed by the Primary Committee for these expenditures. The Primary Committee has argued that it does not have to pay for the advertisements since the Nebraska Republicans arranged that expenditure independently to notify its members of Senator Dole's visit. However, as noted the advertisements seem to have been prepared at the direction of the Primary Committee. Notwithstanding, who actually arranged for the advertisements, the Primary Committee ultimately reimbursed the Nebraska Republicans for these expenditures. If the Primary Committee reimbursed the Nebraska Republicans for the

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expenses, then the expenses must have been made in connection with Senator Dole's seeking the Republican nomination. 11 C.F.R. § 9032.9(a)(2). If the reimbursement was not made in connection with seeking the nomination, then the disbursement is non-qualified campaign expense. *Id.* However, regardless of when and if the advances were refunded by the Primary Committee, the advances still constitute contributions in excess of the \$5,000 contribution limitation set forth at 2 U.S.C. § 441a(a)(1)(A).

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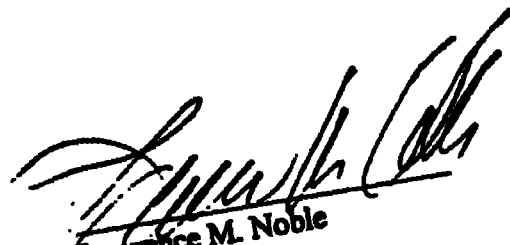
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IV. RECO' IMENDATIONS

4. Find reason to believe that the Nebraska Republican Federal Campaign Committee, and Bob Bennie, as treasurer, violated 2 U.S.C. §§ 441a(a)(2) and 434(b).

22.04.405.4351

4/11/97
Date


Lawrence M. Noble
General Counsel